

MICHAEL SATATHITE

IBLA 98-278

Decided September 9, 1999

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring the Minerals Exploration Unit #1 lode mining claim, AMC 349395, null and void ab initio for failure to file within 90 days after location.

Reversed.

1. Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment--
Mining Claims: Location--Mining Claims: Recordation
of Certificate or Notice of Location

Under 43 C.F.R. § 3833.1, the owner of an unpatented mining claim must file in the proper BLM office a copy of the official record of the notice of location or certificate of location within 90 days after the date of location of such claim. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. When only one date appears on the face of a notice of location filed with BLM (other than those dates placed on the document by BLM and the County Recorder), it is reasonable to assume that the date shown is the date of location.

APPEARANCES: Michael Satathite, Tucson, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Michael Satathite has appealed a March 27, 1998, decision issued by the Arizona State Office, Bureau of Land Management (BLM), declaring the Minerals Exploration Unit #1 lode mining claim, AMC 349395, null and void ab initio because a copy of the notice of location for that claim was not received by BLM within 90 days after the date of location.

The record shows that on January 7, 1998, BLM received copies of notices of location from Satathite for the Minerals Exploration Unit #1

and Minerals Exploration Unit #2 lode mining claims (AMC 349395 and AMC 349394). In the notice for the Minerals Exploration Unit #2 claim, the stated date of location was November 26, 1997. Most of the information found on the notice of location had been typed in the blanks provided in the printed form for a notice of location. However, the typed insert in the blank provided for noting the date of location had been blotted out and "November 26, 1997" was handwritten next to it. The notice for the Minerals Exploration Unit #1 claim appears to be a photocopy of the notice for the Minerals Exploration Unit #2 claim. The typewritten information and map are identical on the two pages comprising each notice, except where the name of the claim is set out on the notice for Minerals Exploration Unit #1 claim, the designation after "Minerals Exploration Unit" is marked out and a handwritten "#1" inserted. The date of location is blotted out on the first page of the notice for Minerals Exploration Unit #1 in the same manner as it had been for the Minerals Exploration Unit #2, but no date was added on that line, as was done in the notice for the Minerals Exploration Unit #2.

In its decision, BLM held as follows:

Regulations found in 43 CFR 3833.1-2(a) require that within 90 days after location all unpatented mining claims or sites be filed in the proper office of the Bureau of Land Management. The mining claim identified as Minerals Exploration Unit #1, serialized as AMC 349395, did not show a date of location. The mining claim was signed November 26, 1996, which exceeds the 90 day requirement, and is hereby declared null and void ab initio.

In his statement of reasons, Satathite reports that both notices were recorded with the local recorder's office and asserts that he assumed those notices were timely because they were accepted.

[1] Under the Departmental regulation in effect when Satathite filed his notices of location, 43 C.F.R. § 3833.1-2(a), the owner of an unpatented mining claim was required to file a copy of the official record of the notice of location with BLM within 90 days after the date of location. See also 43 U.S.C. § 1744 (1994). The failure of an owner to do so results in the claim being declared abandoned and void under 43 C.F.R. § 3833.4(b). See Byron L. Philpott, 137 IBLA 137, 139 (1996); John C. And Theresa K. Buchanan, 52 IBLA 387, 388 (1981). In Byron L. Philpott, *supra* at 140, we made the following observation regarding what constitutes the date of location:

Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's

office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1994), as that is the date upon which the claimant asserts he located the claim and entered upon the public land. See Mrs. George G. Wagner, 63 IBLA 146, 149-51 (1982). The Board has held that allegations that the true date of location is other than that recorded on the notice of location cannot dictate a different result. John C. Buchanan, 52 IBLA 387 (1981); Lee Resources Management Corp., [50 IBLA 131 (1980)]; P & S Mining Co., 45 IBLA 115 (1980).

BLM was able to unequivocally determine the date of location for the Minerals Exploration Unit #2 claim because the date November 26, 1997, was clearly stated on the line beginning "[t]he date of location is." In addition, the notice of location is signed by Satathite and dated "November 26." The notice of location is notarized, and the date "11/26/97" appears next to the notary signature. The back of the notice of location form is entitled "Map of Mining Claim Location." It is also signed but the date "November 26, 1996" appears next to Satathite's signature. As the date of location is recited on the notice of location, the date of location for the Minerals Exploration #2 claim must be construed as November 26, 1997. BLM correctly accepted this filing.

For the Minerals Exploration Unit #1 claim, the mining claim at issue, the determination of the date of location is not as easy. Under the law of the State of Arizona, the date of location is to be specified by the locator on the notice of location filed with the recording office. Ariz. Rev. Stat. Ann. § 27-202 (1976); see H. Mason Coggin, 54 IBLA 224, 225-26 (1981); John C. and Theresa K. Buchanan, *supra* at 389; Weldon Mead Kennedy, 49 IBLA 180, 182 (1980). The date of location was not specified in item number 5 of the notice for the Minerals Exploration #1 claim. However, the date next to Satathite's signature on the notice of location for the Minerals Exploration #1 claim is "November 26, 1997." ^{1/} The notice of location was notarized, and the date "11/26/97" appears next to the notary signature. The notice of location was recorded in the Pima County, Arizona, Recorder's Office on December 4, 1997. The date November 26, 1996, appears on the bottom of the document entitled "MAP OF MINING CLAIM LOCATION" next to Satathite's signature, just as it did on the Map of Mining Claim Location for the Minerals Exploration #2 claim.

The State of Arizona statutes provide that "an executed copy of the location notice" is to be recorded in the office of the county recorder "within ninety days from the time of the location." Ariz. Rev. Stat. Ann.

^{1/} As noted above, the location notice for the Minerals Exploration #2 claim had the notation "November 26" next to the signature, without giving a year.

§ 27-203(A)(1) (1976). Failure to perform this required act results in a determination of abandonment and forfeiture of rights. Ariz. Rev. Stat. Ann. § 27-203(E) (1976). Thus, we must assume the date of location recognized by the Recorder's Office for the Minerals Exploration #1 claim was November 26, 1997, thus providing a determination regarding the validity of the recorded document. Otherwise, the claim would have been void even before Satathite attempted to record the notice of location with BLM.

We cannot accept BLM's decision. The notice was signed on November 26, 1997, not 1996 as reported by BLM. As BLM's decision was grounded on the earlier date as the date of location, its decision is not supported by the record before us. Compare Precious Minerals Unlimited, 61 IBLA 136 (1982); Lester L. Learned, 54 IBLA 147 (1981). All of the dates appearing on the face of the notice of location, other than the handwritten November 26, 1997, date appearing on the line next to Satathite's signature were placed on that document by the Pima County Recorder or by BLM. Clearly, the best evidence of the date of location is the only date appearing on the face of the original notice of location. ^{2/} That date was November 26, 1997, and Satathite's filing with BLM on January 7, 1998, was certainly within 90 days of that date. Therefore, we find it appropriate to reverse the March 27, 1998, decision issued by the Arizona State Office, BLM, declaring the Minerals Exploration Unit #1 lode mining claim, AMC 349395, null and void ab initio because a copy of the notice of location for that claim was not received by BLM within 90 days after the date of location.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is reversed.

R.W. Mullen
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

^{2/} This conclusion is supported by a comparison of the two location notices which were numbered consecutively, and filed with the County Recorder on Dec. 4, 1997, and with BLM on Jan. 7, 1998.